

# Cahoy Supp. Dec. Ex. 99

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL )  
ROBOT ANTITRUST LITIGATION ) Lead Case No.:  
----- ) 3:21-cv-03825-VC  
SURGICAL INSTRUMENT SERVICE )  
COMPANY, INC., ) Case No.:  
 ) 3:21-cv-03496-VC  
Plaintiff, )  
 )  
vs. )  
 )  
INTUITIVE SURGICAL, INC., )  
 )  
Defendants. )  
----- )  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS )  
----- )

DEPOSITION OF:  
GRETA VALENTINE BERNIER  
MONDAY, NOVEMBER 7, 2022  
3:35 p.m. Eastern Time

REPORTED BY:  
Vickie Blair  
CSR No. 8940, RPR-CRR  
JOB NO. 5568494

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1 Deposition of GRETA VALENTINE BERNIER, the witness,  
2 taken on behalf of the Defendants, on Monday,  
3 November 7, 2022, 3:35 p.m. Eastern Time, before VICKIE  
4 BLAIR, CSR No. 8940, RPR-CRR.

5  
6 APPEARANCES OF COUNSEL VIA ZOOM:

7  
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22 ALSO PRESENT:

23 NOAH SUSZCKIEWICZ, Videographer  
24  
25

|    |   |   |          |
|----|---|---|----------|
| 1  | Q | About how long did your meeting with                  | 12:40:48 |
| 2  |   | Mr. Bateman last?                                     | 12:40:51 |
| 3  | A | An hour.  | 12:40:51 |
| 4  | Q | Was anyone there apart from you and                   | 12:40:53 |
| 5  |   | Mr. Bateman?  | 12:41:01 |
| 6  | A | No.   | 12:41:01 |
| 7  | Q | Did you look at any documents in                      | 12:41:02 |
| 8  |   | preparation for today's deposition?                   | 12:41:04 |
| 9  | A | No.   | 12:41:05 |
| 10 | Q | Have you ever spoken with anyone from the             | 12:41:06 |
| 11 |   | Franciscan Alliance hospital network in Indiana?      | 12:41:11 |
| 12 | A | No.   | 12:41:17 |
| 13 | Q | Have you ever spoken with anyone from                 | 12:41:17 |
| 14 |   | Larkin Community Hospital in Miami?                   | 12:41:20 |
| 15 | A | No.   | 12:41:22 |
| 16 | Q | Are you currently employed by Valley                  | 12:41:22 |
| 17 |   | Medical?  | 12:41:28 |
| 18 | A | Yes.  | 12:41:28 |
| 19 | Q | What is your role at Valley?                          | 12:41:28 |
| 20 | A | I am a colorectal surgeon at Valley, and I            | 12:41:32 |
| 21 |   | am the chief of surgery for the medical staff office. | 12:41:37 |
| 22 | Q | How long have you been employed by Valley?            | 12:41:42 |
| 23 | A | Three years and three months.                         | 12:41:48 |
| 24 | Q | How long have you been chief of surgery at            | 12:41:52 |
| 25 |   | Valley?   | 12:41:54 |

|    |              |  |          |
|----|--------------|--|----------|
| 1  | A            | Yes.   | 12:48:48 |
| 2  | Q            | Do you consider whether a surgical robot               | 12:48:49 |
| 3  |              | is available at the time you need in deciding what     | 12:48:56 |
| 4  |              | surgical modality to use?                              | 12:49:00 |
| 5  | A            | No.  | 12:49:01 |
| 6  | Q            | You mentioned previously that your                     | 12:49:01 |
| 7  |              | preference for all patients is to offer a robotic      | 12:49:13 |
| 8  |              | approach.  | 12:49:17 |
| 9  |              | Why is that?   | 12:49:18 |
| 10 | A            | Because, in my experience, they have less              | 12:49:20 |
| 11 |              | pain, quicker return of bowel function, shorter length | 12:49:27 |
| 12 |              | of stay, and, in general, recover better. I also find  | 12:49:33 |
| 13 |              | that my dissection can be more accurate and my         | 12:49:41 |
| 14 |              | visualization or exposure of the things that I need to | 12:49:47 |
| 15 |              | see is significantly better with the robotic approach  | 12:49:49 |
| 16 |              | than the laparoscopic approach.                        | 12:49:54 |
| 17 | Q            | Is -- is each of benefits that you just                | 12:49:57 |
| 18 |              | described that you have experienced for robotic        | 12:50:06 |
| 19 |              | assisted procedures, are you comparing them both to    | 12:50:10 |
| 20 |              | open and laparoscopic procedures or are there some     | 12:50:13 |
| 21 |              | aspects of those benefits that are equivalent between  | 12:50:16 |
| 22 |              | laparoscopic and robotic assisted?                     | 12:50:23 |
| 23 | MR. BATEMAN: | Objection to form.                                     | 12:50:25 |
| 24 | THE WITNESS: | They are not equivalent.                               | 12:50:26 |
| 25 |              | There is, I would say, an interval                     | 12:50:27 |

1 improvement each one, so there's a significant 12:50:30  
2 improvement between -- in doing any kind of what we 12:50:33  
3 would call minimally invasive surgery, meaning 12:50:36  
4 laparoscopic or robotic over open; but, beyond that, 12:50:40  
5 there are advantages of using the robotic system beyond 12:50:43  
6 straight stick laparoscopy. 12:50:46

7 BY MR. CHAPUT: 12:50:48

8 Q When you say that your dissection can be 12:50:54  
9 more accurate, what do you mean by that? 12:50:57

10 A Because of the -- the visibility and the 12:50:58  
11 way that the robotic instruments are wristed and can 12:51:02  
12 move, we can -- I can be more fine tuned with my 12:51:07  
13 dissection than using laparoscopic instruments which 12:51:12  
14 just open, close, and rotate. 12:51:14

15 Q You also mentioned that visualization is 12:51:18  
16 significantly better with the robotic approach than 12:51:22  
17 with a laparoscopic approach. 12:51:24

18 What do you mean by -- what do you mean by 12:51:25  
19 that? 12:51:30

20 MR. BATEMAN: Objection to form. 12:51:30

21 THE WITNESS: So it's a 3D camera instead 12:51:34  
22 of 2D, it -- I just think the optics in general are 12:51:37  
23 better, and then I also have the benefit of being able 12:51:41  
24 to control it myself; whereas in a laparoscopic case, 12:51:43  
25 an assistant would be holding the camera and showing me 12:51:48

1     what they think I should see, which takes a lot of     12:51:51  
2     understanding on the assistant's part and ability to     12:51:55  
3     take direction.     12:51:58

4             In a robotic case, I control exactly what     12:51:59  
5     I'm looking at, and the camera is better.     12:52:01

6     BY MR. CHAPUT:     12:52:03

7             Q     Have you found that the proportion of     12:52:15  
8     surgeries that you perform using a robotic approach has     12:52:17  
9     increased over time or has it largely been consistent     12:52:21  
10    since you started your practice?     12:52:27

11            A     It increased significantly when I moved     12:52:29  
12    from the university to Valley.     12:52:31

13            Q     Why is that?     12:52:32

14            A     Access -- well, two things, I'm sorry,     12:52:33  
15    access and the Xi over the Si.     12:52:39

16            Q     By access, do you -- do you simply mean     12:52:42  
17    the availability to book a robotic -- a robot equipped     12:52:46  
18    operating room?     12:52:52

19            A     Correct.     12:52:52

20            Q     Why has your utilization of the da Vinci     12:52:53  
21    system increased with the Xi compared to the Si?     12:53:00

22            A     Because most of the operations that we do     12:53:02  
23    require operating in what we call multiple quadrants,     12:53:07  
24    so not just pointed into one location in the abdomen,     12:53:12  
25    the Xi is able to move through multiple quadrants in a     12:53:17

1 way that the Si couldn't, or couldn't without 12:53:20  
2 significant cumbersome adjustments. 12:53:22  
3 When I was operating with the Si, I would 12:53:27  
4 have to do half of the operation laparoscopically in 12:53:28  
5 the other quadrants and then switch to using the robot 12:53:33  
6 in the portion with the most complex dissection or deep 12:53:36  
7 in the pelvis is the most common reason for a 12:53:40  
8 colorectal surgeon; and, with the Xi, I can do it all 12:53:44  
9 with one platform instead of using two different 12:53:47  
10 systems for one case. 12:53:50  
11 Q I see. 12:53:52  
12 Have you found that you're able to 12:53:54  
13 complete your procedures more efficiently using the Xi 12:53:56  
14 than with the Si? 12:54:00  
15 A Yes. 12:54:01  
16 MR. BATEMAN: Objection to form. 12:54:01  
17 BY MR. CHAPUT: 12:54:01  
18 Q Does it -- has -- has using the Xi reduced 12:54:02  
19 the amount of operating time necessary? 12:54:05  
20 MR. BATEMAN: Objection to form. 12:54:10  
21 THE WITNESS: Over the Si? 12:54:13  
22 BY MR. CHAPUT: 12:54:14  
23 Q Yes. 12:54:16  
24 A The Xi has reduced the time as compared to 12:54:17  
25 the -- or increased the efficiency as compared to the 12:54:20



1 Si. 12:54:24

2 Q Are there any surgeries that you perform 12:54:24

3 exclusively using one modality and not the others? 12:54:37

4 A No. 12:54:47

5 Q Does Valley Medical have any policies or 12:54:51

6 procedures that inform your decision of which modality 12:55:05

7 to recommend to your patients? 12:55:10

8 A Does Valley have any policies or 12:55:12

9 procedures that affect the modality I recommend? No. 12:55:17

10 Q Does Valley Medical have any policies or 12:55:21

11 procedures with respect to how you obtain informed 12:55:27

12 consent from your patients? 12:55:32

13 A Yes. 12:55:34

14 Q What are those policies or procedures? 12:55:39

15 A We have a standardized consent form, 12:55:42

16 originally on paper, recently switched to an electronic 12:55:47

17 version that I'll use for all procedures, and then we 12:55:51

18 add our surgical details, and that consent must be 12:55:55

19 signed within 30 days of the operation. 12:56:00

20 Q When you are obtaining informed consent 12:56:06

21 from your patients, do you explain to them the 12:56:10

22 comparative risks and benefit of different surgical 12:56:16

23 modalities? 12:56:20

24 A Yes. 12:56:20

25 Q Does Valley Medical calculate the cost of 12:56:21

1 STATE OF CALIFORNIA )

2 ) ss.

3 COUNTY OF LOS ANGELES )

4 I, Vickie Blair, CSR No. 8940, RPR-CRR, in  
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness  
7 named in the foregoing deposition was by me duly sworn  
8 to testify as to the truth, the whole truth, and  
9 nothing but the truth;

10 That said deposition was taken before me  
11 at the time and place therein set forth, and was taken  
12 down by me stenographically and thereafter transcribed  
13 via computer-aided transcription under my direction and  
14 is a true record of the testimony given;

15 I further certify I am neither counsel  
16 for, nor related to, any party to said action, nor  
17 interested in the outcome thereof;

18 IN WITNESS WHEREOF, I have hereto  
19 subscribed my name this 20th day of November, 2022.

20  
21  
22  
23 

24 Vickie Blair, CSR No. 8940, RPR-CRR  
25